

DATE: February 24, 2005

FILE REF: NR 135/NMAC

TO: Nonmetallic Mining Advisory Committee (NMAC)

FROM: Tom Portle

SUBJECT: Minutes of January 27, 2005 Nonmetallic Mining Advisory Committee Meeting

Following is a report on the main points from the meeting of the NR 135 Nonmetallic Mining Advisory Committee ["NMAC"], held on January 27, 2005 from 10-1 at the Wisconsin Highway Patrol District One Headquarters Building in DeForest, WI.

NMAC members present: Jim Burgener, Bruce Brown, Sue Courter, Mike Erickson, Ron Garrison, Ed Reesman, Matt Stohr & Gary Werner

Sitting in for NMAC member: None.

NMAC members not present: Marty Lehman & Bryce Richardson

WDNR Staff Present: Dan Graff, Phil Fauble, Dave Misterek, Larry Lynch and Tom Portle

Others Present: Marty Billner, Northern Environmental, Clint Weninger, Payne & Dolan; Matt Bremer, Sauk County, Jen Schuetz, Kramer Co., Pat Stevens Wisconsin Transportation Builders Association, Wendy Giese, Fond du Lac County.

Main points of discussion, motions and any decisions or necessary "follow-up activities" are presented below:

(Agenda items in ► **bold**)

► **WELCOME, HOUSE-KEEPING, AGENDA REPAIR/UPDATES**

Tom Portle went over the meeting ground rules

- Minutes of July, 2004 NMAC Meeting approved
- Re-appointment letters provided - for 2004 term: Bruce Brown - WGNHS & Marty Lehman - Badger MC; and for 2005 term: Ron Garrison, Mike Erickson, & Gary Werner provided)

Go-Around - the "go-around" did not occur at this meeting.

► **Agenda repair/Updates - RA Survey Update (Handout), Newsletter, Update on the Comprehensive Planning Mineral Resource (Smart Growth/Registration) Workgroup**

• **Tom Portle** indicated that an I&E document on Groundwater portions of NR 135 reclamation plans is being worked on to assist operators in addressing this portion of NR 135. (this was a follow-up from APW, WCA Roundtable). Dave Johnson has begun the process and I have been working on it and will run it by Bruce in the near future.

Tom Portle gave an update on the **(Smart Growth/Registration) Workgroup** and relayed replies from **Eric Fowle, Bruce Brown, Jim Schmidt**

Again, the ultimate goal of the **(Smart Growth/Registration) Workgroup** is to come up with a planning model that counties can use to properly consider planning for future mineral resource needs in a meaningful way rather than simply accounting for existing operations and coordinate any technical or informational resources that could be gainfully utilized. An example of this would be a brochure that Pat Stevens (workgroup member) through WTBA has put together for producers to use when talking to Towns and Counties on mineral resources.

Along these lines, I am sending a link for a recent document that is available on-line. It briefly mentions nonmetallic mineral resources under "Natural resources" Element.

http://www.doa.state.wi.us/dir/documents/Resource_directory101703.pdf

Bruce Brown - Recently gave a talk on the subject to the APW and emphasized the need for the operator to become engaged early in the process. He indicated that he tried to alert producers that planning was going on without due consideration of aggregate resources and the need to get involved. Bruce feels it is dicey whether adequate consideration of the resource is occurring at the appropriate time in the planning process and if the process is actually working as intended.

Everyone agrees that the more responsibility and the more engaged in the process the operator is the better, Bruce also shared some information about Minnesota - they have done a study dealing with planning issues and are beginning the implementation phase. They have a down-loadable model. Bruce will attend a conference discussing this in March in St. Cloud and keep us updated.

Bruce is also planning to start a project this spring with DOT to finish what we started in integrating locational and resource / test info on active sites statewide.

Eric Fowle responded by email - " ... nothing to report on regarding the NM/Land Use issue, other than I hope to find time during late winter/early spring to reconvene some of our Regional Comprehensive Plan subcommittees to continue discussions on regional policies and implementation tools. I may have something to report out on at your next meeting."

Jim Schmidt responded by email. "... the new law requiring planning bodies to contact aggregate producers and leaseholders of aggregate properties is helping in this effort. I am starting to get calls and correspondence from Townships on their comprehensive plans and being given the opportunity for input."

Jim Burgener indicated that some progress is evident in getting local planning issues on a template but the resource issues not adequately addressed yet.

Mike Erickson - mentioned that there may need to be trailer legislation to improve the situation.

Gary Werner suggested that if DOA organization has changed it would behoove the NMAC to do an "outreach" with them. It would be important to visit with DOA as to their role and its importance to the industry. It would be advantageous to introduce the NMAC and appraise the DOA of the NMAC's past efforts and current desires and expectations.

Tom Portle indicated that it was appropriate to reconvene the group and report back at the July 2005 NMAC meeting. We concluded that the subcommittee should meet again in the near future and review our previous efforts and planned activities and decide if they are still appropriate. In addition, we should identify any other efforts/activities that may be necessary. The subgroup will report back to the NMAC in July.

Ed Reesman - Ed reemphasized the role for the process and education to help allay negative predispositions that come up when industry begins an interaction in the planning process. Ed also stated that it is important to get the most from the efforts and that efforts are not always proportionately rewarded particularly at the local level.

There has been quite a bit of change at DOA and the efforts on Smart growth and the interaction with the DOA is somewhat unclear at present time.

We agreed that we should have a representative of DOA be present at the July 2005 NMAC meeting.

► Discussion letting operators know about scheduled Audits

• **handout** prepared by **Ron Garrison** was distributed and Ron explained the concept. (to allow for additional input into the quality assurance process)

"... give the operators an opportunity to participate in the audit process if they so desire (by)... providing them an opportunity to make written comments on the program implementation and administration. The comments from the operators ... (provided on a) ... voluntary basis ... (to) ... provide additional insight into the success or potential problem areas of the local RA program. The Department can review the comments, determine if there is a pattern of operator concern, and use the responses to help decide what topics to discuss with the RA. If warranted, perhaps onsite visits could be set up to discuss specific issues with individual operators need for the Department to respond to the comments of individual operators."

There was concern expressed by **Gary Werner** and others about an "implied commitment" to address and respond to concerns that were raised. **Jim Burgener & Ed Reesman** wanted to keep the focus on supporting operators and reclamation. **Dan Graff** indicated that any statewide

policy established may well necessitate a corresponding rule change. **Dan** also raised the possibility of doing this as a pilot project in one or two selected jurisdictions. **Jim Burgener** had talked with Deb and Justin - suggested that perhaps all the operators ought to be given an opportunity to comment on general issues with administration etc. (this could be done, perhaps, on a periodic basis). **Larry Lynch** suggested that a list of those RA's to be audited could be put on the website thus allowing for notice and operator comment. This would have to be done well in advance to work. **Ron Garrison** agreed and pointed out that this would also make it possible for citizens to provide input into the process. **Phil Fauble** also suggested that the information could be put in the Reclamation Newsletter.

► FINANCIAL ASSURANCE

Summary (**handout**) of APW organized **January 12, 2005 FA meeting** in Madison with surety representatives, WTBA, WCA, WCCA, DNR etc.

Follow-through from 1/12/05 FA meeting - Consistency issues and FA forms - request that **Jim Burgener** had already polled WCCA and gotten very little response which was interpreted as indication of a non-issue; he will do it again to make sure before the next meeting.

Follow-through on statutory changes from last session

- **FA Statewide risk pool** - Pat Stevens ... Mike Erickson said this might have become less of an issue.

NR 340 financial assurance (AB 655 – WI Act 118) - **Tom Portle** briefed the NMAC on how changes to NR 340 financial assurance options were made to nearly as possible to match NR 135. These were included in AB 655 signed into law and were effective in February.

Tom Portle indicated that it would be best to keep the **Hybrid FA- lien plus flexible arrangement on the front burner** - Variation on NR 135.40 (5) Multiple Projects under one (- allow less than 100% coverage, at the discretion of the RA - where risk is negligible due to enough valuable sites with adequate reserves of marketable material (economics of scale of contractor performing reclamation).

► CHANGES/ REVISIONS TO NR 135

Last meeting this was brought up ("*discussion of Administrative Code changes - it is approaching time to take stock of what we have learned from the first 3 years of NR 135 Program implementation and consider any appropriate code changes.*")

Larry Lynch - April/May time frame to give notice to and receive authorization from NRB to begin code changes.

Dan Graff indicated that we are still hoping to process all the enhancements & housekeeping changes to NR 135 at one time if at all possible.

Jim Burgener - Same deadline for fee submittal and submittal of annual report; fee collection timing item - less confusing & more efficient to collect fees based upon the previous calendar year - DNR portion of fees linked to and supported by their annual report data. **Tom Portle** described a practical difficulty - how to keep fees that RA programs are dependent on coming in during the year or so it would take to move from "paying in advance to paying after the mining occurs"

Hybrid FA- lien plus flexible arrangement - (also see previous item for more detail).

► **LEGISLATIVE UPDATE** (Regular Scheduled item)

- **FA Statewide risk pool - Pat Stevens ... Mike Erickson** said this might have become less of an issue.

► **INPUT FROM PARTNERS AND PUBLIC (5 min. per person)**

Pat Stevens - public input into Smart Growth is very important. He refreshed memory on changes in last legislative session to encourage input from operators and those who have registered the land containing a nonmetallic mineral deposit. The legislation he referred to was "**Smart Growth notification**" (**AB 728 – WI Act 307**) where the owners of land registered as containing a nonmetallic mineral deposit under NR 135.53 - .64 are affected. They must notify the jurisdiction engaged in Smart Growth and in turn, must receive notification of any changes that might affect them.

Pat also indicated that WTBA would be favorable towards Ron Garrison's proposal regarding audit notification. He said it should be easy for the DNR to obtain a list of affected operators in given jurisdiction and send notice.

Matt Bremer of Sauk County was curious if the "**Pond Exemption**" from nonmetallic mining reclamation legislation would come up again in this session. He wanted to know if there was any news of its status.

► **ANY OTHER BUSINESS** (as permitted by law - regular item)

None for this meeting.

► **INPUT ON NR 135 PROGRAM IMPLEMENTATION ISSUES NEEDING ATTENTION**

(regular item - to be used to generate a list of items that need attention)

None for this meeting.

► **FEEDBACK**

None for this meeting.

► **NEXT MEETING**

The NMAC decided to meet again in 6 months - **July 28, 2005** was suggested.
All agreed that the next meeting should again be held in DeForest, WI.

Partial List of Agenda Items for Next Meeting:

- Report from the Registration Workgroup meeting and hopefully a discussion with a DOA representative.
- NR 135 revisions.
- Public Input

► **Adjourn** about 1 PM.